

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SANTIAGO SOTO,

Plaintiff,

No. CIV S-04-0571 FCD GGH P

vs.

WARDEN D.L. RUNNELS,

Defendant.

ORDER

Plaintiff has requested the appointment of counsel. The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not find the required exceptional circumstances at this time. Plaintiff's request for the appointment of counsel will therefore be denied.

The court notes that plaintiff's request was not served on defendant. Every document submitted to the court for consideration must be served on defendant. Fed. R. Civ. P. 5. Documents not to be served electronically are usually served by placing a copy in the U.S.

1 mail. If an attorney has filed a document with the court on behalf of any defendant, then
2 documents submitted by plaintiff must be served on that attorney and not on the defendant.
3 Every document submitted conventionally to the court (e.g., by a prisoner proceeding pro se)
4 must include a certificate stating the date an accurate copy of the document was mailed to
5 defendant or his attorney and the address to which it was mailed. See Local Rule 5-135(b) and
6 (c). Plaintiff is cautioned that failure to properly serve any documents subsequently filed in this
7 action, and failure to include a proper certificate of service with such filing, may result in a
8 recommendation that this action be dismissed.

9 Accordingly, IT IS HEREBY ORDERED that

10 1. Plaintiff's April 14, 2005 request for the appointment of counsel is denied
11 without prejudice;

12 2. Plaintiff must properly serve any documents subsequently filed in this action
13 and include a proper certificate of service with such filing; failure to do so may result in a
14 recommendation that this action be dismissed.

15 DATED: 7/20/05

16 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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